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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

5  
6 ADAM SHAW, PETER GOLIGHTLY,  
7 JUSTIN TURNER, and JOSHUA  
8 STANSFIELD as individuals and on  
behalf of all others similarly situated and  
the general public,  
9

10 Plaintiffs,  
v.  
11 WIZARDS OF THE COAST LLC,  
12  
Defendant.

Case No. 5:16-cv-01924-EJD  
**CLASS ACTION**

**STIPULATED ORDER FOR  
DISCOVERY OF  
ELECTRONICALLY STORED  
INFORMATION (ESI)**

**AS MODIFIED**

14  
15 The Parties to the above-captioned action HEREBY STIPULATE AND  
16 AGREE, by and through their undersigned counsel, that the following  
17 specifications shall govern discovery of electronically stored information (“ESI”)  
18 produced by the Parties during discovery in the above-captioned action.

19 **1. PURPOSE**

20 This Order will govern discovery of electronically stored information  
21 (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure, this  
22 Court’s Guidelines for the Discovery of Electronically Stored Information, and  
23 any other applicable orders and rules.

1        This Stipulation shall not enlarge, reduce, or otherwise affect the scope of  
 2 discovery in this litigation as governed by the Federal Rules of Civil Procedure,  
 3 the local rules of court, the Parties' previous meet and confer discussions and/or  
 4 agreements, and the Court's orders (other than any default rules governing  
 5 electronic discovery which this Stipulation explicitly replaces), nor imply that  
 6 discovery produced under the terms of this Stipulation is properly discoverable,  
 7 relevant, or admissible in this or in any other litigation.

8 **2. COOPERATION**

9        The Parties are aware of the importance the Court places on cooperation  
 10 and commit to cooperate in good faith throughout the matter consistent with this  
 11 Court's Guidelines for the Discovery of ESI. The Parties shall take reasonable  
 12 steps to comply with the procedures set forth in this Stipulation.

13        Consistent with the Northern District of California's Guidelines for the  
 14 Discovery of Electronically Stored Information, ~~and~~ the Parties' obligations  
 15 under applicable provisions of the Federal Rules of Civil Procedure, ~~the Parties~~  
~~standing order re: civil discovery disputes, the parties will attempt to resolve~~  
~~will attempt to resolve, in person, in writing (including e-mail), or by telephone,~~  
~~disputes by complying with the standing order. All discovery and disclosure disputes~~  
~~disputes regarding the issues set forth herein prior to filing a motion with the~~  
~~are subject to the undersigned's standing order.~~  
 16 Court, or otherwise seeking relief. If the Parties are unable to resolve the dispute  
 17 after a good faith effort, any Party may seek Court intervention in accordance  
 18 with the Court's procedures.

21        Nothing in this Stipulation shall be interpreted to require disclosure of  
 22 materials that a Party contends are not discoverable or are protected from  
 23 disclosure by the attorney-client privilege, the attorney work product doctrine, or

1 any other privilege that may be applicable. Additionally, nothing in this  
2 Stipulation shall be deemed to waive or limit any Party's right to object to the  
3 production of certain electronically stored information, ~~to move for a Protective  
relief.~~ <sup>or seek judicial</sup>  
4 ~~Order, or to move to compel, pursuant to the Federal Rules of Civil Procedure.~~

5 **3. LIAISON**

6 The Parties have identified liaisons to each other who are and will be  
7 knowledgeable about and responsible for discussing their respective ESI. Each  
8 e-discovery liaison will be, or have access to those who are, knowledgeable about  
9 the technical aspects of e-discovery, including the location, nature, accessibility,  
10 format, collection, search methodologies, and production of ESI in this matter.  
11 The Parties will rely on the liaisons, as needed, to confer about ESI and to help  
12 resolve disputes without court intervention.

13 Defendant's ediscovery liaison is Catharine Morisset,  
14 [cmorisset@fisherphillips.com](mailto:cmorisset@fisherphillips.com). Plaintiffs' ediscovery liaison is Matthew Righetti,  
15 [Matt@righettilaw.com](mailto:Matt@righettilaw.com).

16 **4. PRESERVATION**

17 The Parties acknowledge that they have an obligation to take reasonable  
18 and proportional steps to preserve discoverable information in the Party's  
19 possession, custody, or control. The Parties have agreed that preservation of  
20 potentially relevant ESI will be reasonable and proportionate. To reduce the costs  
21 and burdens of preservation and to ensure proper ESI is preserved, the Parties  
22 agree that:

23

1       A. Time Frame. ESI created or received since April 2013 through present  
2 has been preserved, where it otherwise existed at the time of filing of the relevant  
3 Complaint in this case or the parallel case *Yale v. Wizards of the Coast LLC*,  
4 U.S.D.C for the N.D. Cal., Case No. 15-CV-06337-EJD for the individuals the  
5 Defendant believes are key players as Defendant identified on Exhibit A. As  
6 listed on Exhibit A, Defendant has also preserved additional ESI, to the extent  
7 such exists, for custodians later identified by Plaintiffs, without waiver to  
8 Defendant's objections regarding review and production for ESI for these  
9 custodians (unduly burdensome, not reasonably calculated to lead to the  
10 discovery of admissible evidence, proportionality). These statements are also  
11 without waiver to Plaintiffs' arguments that they are entitled to production of  
12 older ESI, if it exists, and for additional custodians.

13       B. Custodian Exchange: The Parties have conferred regarding the types of  
14 ESI they believe should have been/should continue to be preserved and the  
15 custodians, or general job titles or descriptions of custodians, for whom they  
16 believe ESI should be preserved, e.g., "HR head," "scientist," and "marketing  
17 manager," and exchanged custodian lists. Without waiving any right to  
18 identify/discuss/propose additional custodians as the litigation progresses, as  
19 shown on the attached Exhibit A, the Parties have agreed on certain custodians  
20 for whom ESI will be preserved, subject to the limitations set forth above. This  
21 agreement on the custodians whose ESI will be preserved is in no way a waiver  
22 by either Party that a search or review of each and every custodian's ESI would  
23 be/would not be proportional, not unduly burdensome, or reasonably calculated

1 to lead to the discovery of admissible evidence.

2 D. Defendant maintains that the circumstances of this case do not warrant  
3 preservation, collection, review, or production of ESI that is not reasonably  
4 accessible because they anticipate that enough relevant information can be  
5 yielded from reasonably accessible sources and, as necessary and appropriate,  
6 supplemented with deposition discovery. Moreover, the remote possibility of  
7 additional relevant information existing in not reasonably accessible sources is  
8 substantially outweighed by the burden and cost of preservation, collection,  
9 review, and production of ESI from sources that are not reasonably accessible.  
10 Plaintiffs will not agree to either of the above statements. Without waiving  
11 Plaintiffs' right to seek production of such ESI at a later date, provided such even  
12 exists, the Parties agree that the following ESI is generally not reasonably  
13 accessible, and will not be searched in either Party's initial production or any  
14 production if it does not exist:

15 1. Deleted, shadowed, damaged, residual, slack, fragmented, or other  
16 data only accessible by forensics. Defendant is uncertain that such data may even  
17 exist, and would be unable to confirm this without having system hard drives  
cloned and searched for a forensic examiner.

18 2. Random access memory (RAM), temporary files, or other ephemeral  
19 data that are difficult to preserve without disabling the operating system.  
Defendant does not have such data available.

20 3. On-line access data such as temporary Internet files, history, cache,  
cookies, and the like. Defendant believes no such data exists.

21 4. Data stored on photocopiers, scanners, and fax machines.

22 5. Data in metadata fields that are frequently updated automatically,  
such as last-opened dates.

23 6. Data maintained or duplicated in any electronic backup system for

1 the purpose of system recovery or information restoration, including but not  
2 limited to, system recovery backup tapes or other media, continuity of operations  
3 systems, and data or system mirrors or shadows, because such data is routinely  
4 purged, overwritten, or otherwise made not reasonably accessible in accordance  
5 with an established routine system maintenance policy prior to this litigation.  
6 Plaintiffs reserve the right to inquire or seek production of available backups that  
7 may exist if discoverable information is not readily accessible.

8       7. Server, system, or network logs.

9       8. Voicemail messages.

10     9. Data remaining from systems possessed by either Party that is no  
11 longer in use that is unintelligible on the systems in use. Defendant states that no  
12 such data exists.

13     10. Instant messages, regardless of platform. Wizards did not make any  
14 instant message platform available to its users until roughly the last year. It  
15 currently makes Lync/Skype available to its users, but logs are unavailable and  
16 users are not allowed to use persistent chat or save conversations in the ordinary  
17 course of business under Wizards' retention policies. Defendant shall preserve  
18 such ESI to the extent such exist that are/were sent using a platform that  
19 Defendant administers.

20     **5. SEARCH METHODOLOGY AND SEARCH TERMS/EMAIL**

21     The Parties have conferred regarding email production, exchanged  
22 custodian lists, and Plaintiff has provided proposed initial search terms and  
23 custodians. Plaintiffs have asked for a review of 109 different key word searches  
for nearly 40 custodians from January 1, 2010 to the present. Defendant has  
provided information to Plaintiffs it contends demonstrates why, given the  
potential number of reviewable data such a search would net, it maintains that  
Plaintiffs' proposed, custodians, search terms, and dates are not reasonably  
calculated to lead to the discovery of admissible evidence and that conducting a  
search and review of proposed custodians is unduly burdensome and  
disproportional. As indicated on the attached Exhibit A, some of the custodians

1 have not worked for Defendant for several years, consequently, those custodians'  
2 email accounts no longer exist. Further, given the number of custodians  
3 Plaintiffs have listed, Defendant's employees' substantial use of emails, and  
4 Plaintiffs' proposed search terms, Defendant maintains that such a search and  
5 review of potentially responsive emails is not reasonably calculated to lead to the  
6 discovery of admissible evidence, would be unduly burdensome, and is cost  
7 prohibitive. Plaintiffs contend that Defendant has failed to identify with  
8 specificity the purported costs or hours of review required to produce Plaintiffs'  
9 requested ESI and therefore has not carried its burden to prove undue burden.  
10 Plaintiffs have declined to share any ESI production costs. Defendant preserves  
11 its right to seek contribution of ESI production costs from Plaintiffs and to  
12 challenge attorneys' fees related to Plaintiffs efforts related to ESI review,  
13 particularly as relates to Plaintiffs' request and decision to review non-responsive  
14 ESI. Plaintiffs reserve the right to oppose any efforts of Defendant to seek  
15 contribution and defend their efforts related to ESI review, particularly since  
16 Plaintiffs maintain that Defendant advanced the ESI discovery on its own without  
17 consulting with Plaintiffs or engaging in a joint effort for the purpose of  
18 controlling the process.

19           Email Search Methodology:

20           The Parties have subsequently agreed to the following search, review, and  
21 production methodology, without waiver of either Party's ability to later challenge  
22 the method used or either Party's production. The Parties acknowledge their  
23 ongoing obligations to supplement prior responses. The Parties further agree that

1 the fact that a document is hit or captured by the application of any agreed upon  
2 search terms does not mean that such document is necessarily responsive to any  
3 propounded discovery request or is otherwise relevant to this litigation.  
4 Determinations of discoverability, responsiveness, and privilege may be made, in  
5 the first instance, by the Producing Party.

6       *Defendant's Production.* Defendant has decided to search, review, and  
7 produce using predictive analytics/predictive coding, i.e., Catalyst Insight Predict.  
8 Catalyst uses a proprietary algorithm called Contextual Diversity. This  
9 predictive analytics/coding will begin with a "seeding" process.

10       1.     *Phase I and II.* To "seed" a set to train Catalyst's predictive  
11 coding software, Defendant will begin by using analytical search  
12 techniques/review as set forth in Exhibit B. This seeding process shall include up  
13 to three waves of manual review to provide Predict with a base of coding decisions  
14 from which it will rank the remaining universe of documents based on a spectrum  
15 of responsiveness. As set forth on Exhibit B, Defendant shall review either all hits  
16 for each of the custodians identified in the first two Phases or a random sampling<sup>1</sup>  
17 of hits, and then review for responsiveness. Defendant shall produce documents  
18 marked responsive unless otherwise privileged. Defendant shall also produce to  
19 Plaintiffs a random sample set of "nonresponsive" emails (unless privileged) in  
20 order to confirm responsive coding. Plaintiffs have also requested to review a

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22       

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<sup>1</sup>"Random sample," as used throughout, refers to a random sample size generated using Catalyst's mathematical  
23 random sampling parameters to achieve a confidence level of 95% with a 5% margin of error, and an expected  
proportion of 50% responsive.

1 random sample of non-responsive, "no hit" emails, which Defendant has also  
2 agreed to review and produce as part of its initial production.

3       2. *Phase III.* After completion of Phase I and II review and  
4 production, Plaintiffs are invited to (1) identify a reasonable number of specific  
5 custodians or additional search terms for a third phase of review and (2) confer  
6 regarding any responsive coding decisions. Plaintiffs shall provide such feedback  
7 to Defendant so that the parties can meaningfully confer within 45 days after the  
8 completion of Defendant's initial production. Provided the parties reach agreement  
9 as to this third phase of specific custodians and additional search terms, Defendant  
10 shall review an agreed upon samplings of Plaintiffs' suggested "keyword" searches  
11 for the third phase of agreed upon custodians and produce non-privileged  
12 responsive documents. And again, Defendant shall produce to Plaintiffs a random  
13 sample of "nonresponsive" emails (unless privileged) to review and to confirm  
14 responsive coding. Plaintiffs have also requested to review a random sample of  
15 non-responsive, "no hit" emails, which Defendant has also agreed to produce as  
16 part of its Phase III production. Defendant shall clearly identify the non-responsive  
17 and non-responsive, "no hit" emails when produced to Plaintiffs.

18       3. *Phase IV.* After the third wave of the seeding/review process  
19 is complete, Defendant shall use Predict to rank the remaining documents subject  
20 to review/production and, after the post-seeding ranking is set, review a systematic  
21 random sampling of any remaining emails that have been judged as responsive by  
22 Catalyst and not yet reviewed for the 7 custodians identified in Phase I and II and  
23 any additional custodians identified in Phase III, and produce otherwise responsive

1 documents that have not already been produced. Defendant shall also use Predict  
2 to rank remaining unreviewed documents to include the remaining Wizards  
3 custodians listed on Exhibit A. Defendant reserves the right to object that  
4 Plaintiffs' search terms and proposed custodian list is overbroad, disproportional,  
5 and not reasonably calculated to lead to the discovery of admissible evidence.  
6 Plaintiff's position is that Defendant should produce all documents that are ranked  
7 by Predict based on the total number of custodians. The parties shall confer in good  
8 faith regarding review of emails for the additional 37 custodians that Plaintiffs  
9 have identified. In the event coding conflicts arise between Predict and human  
10 reviewers, Defendant agrees to apply an additional review those coding decisions  
11 to confirm accuracy and produce responsive documents. If Defendant identifies  
12 coding conflicts and does not complete this additional review process before the  
13 production date, Defendant shall immediately inform Plaintiffs as to the issue and  
14 confer regarding a new production deadline. The parties also agree to meet and  
15 confer in good faith to attempt to resolve any disagreements regarding the coding  
16 applied to the documents in the seed set or regarding the broader document review  
17 process using Predict.

18       4. *Final.* Finally, as part of the quality control process, Defendant  
19 will review a random sample of non-reviewed documents, subject to agreement by  
20 the Parties, contained in the remainder of the database that were identified as non-  
21 responsive and produce any additional responsive documents, if any. To further  
22 ensure quality control, Defendant will produce to Plaintiffs prior to the cessation of  
23 its review (1) a list of the "High Ranked Positive Terms"; and (2) an estimate of

1 the those number of documents within the entire review set compared to the  
2 number of documents produced. Plaintiffs reserve their right to request that  
3 Defendant review of additional search terms or custodians, and Defendant agrees  
4 to confer in good faith regarding any such requests, without waiver of its  
5 objections.

6       *Plaintiffs' Production.* To the extent Plaintiffs intend to collect responsive  
7 ESI from their emails using search terms, the Parties shall first meet and confer  
8 regarding proposed search terms, date limitations (if any), and the priority of  
9 custodians to be searched. Plaintiffs will also provide a list of search terms or  
10 other search limits used as part of their discovery responses. Plaintiffs shall  
11 meet and confer to attempt to resolve any disagreements regarding the search  
12 terms, dates limits, or other limits applied.

13       (B) Non-Emails: The Producing Party agrees to conduct a reasonable  
14 inquiry into potential sources for unique and discoverable non-email ESI within  
15 the Producing Party's possession, custody, or control, and to produce any  
16 responsive records identified from such sources. To the extent a Party intends to  
17 collect responsive ESI from non-email using search terms, it will follow the  
18 procedures described in paragraph immediately above. The Parties further agree  
19 that Excel and image files shall be excluded from the Predict review process and  
20 instead, shall be manually reviewed.

21      **7. IDENTIFICATION AND COLLECTION OF DOCUMENTS**

22       A. Ongoing Obligations: Except as otherwise agreed upon in this  
23 Stipulation, the Parties will continue to meet and confer in an effort to agree upon:

- 1                   1. Custodians;
- 2                   2. Search methodology and search terms to be applied;
- 3                   3. Location of relevant data sources including custodial,
- 4                   non-custodial and third-parties; and
- 5                   4. Reasonable timeframe for collection, review, and
- 6                   production of documents.

7                   B. Location of ESI: ESI will be collected from custodians  
8 agreed upon by the Parties by searching those custodians' local hard drives,  
9 network drives or active server directories (i.e., shared drives), and reasonably  
10 accessible email accounts, to the extent that these sources contain potentially  
11 relevant information.

12 **8. PRODUCTION FORMATS**

13                   A. Defendant agrees to produce documents in single page TIFF format  
14 with an accompanying file for each document containing the text of the  
15 document in .txt format. Defendant shall also provide a Summation load file  
16 (.dii) and a text file in .csv format containing all relevant metadata. Excel,  
17 database, multimedia (audio video) files, if responsive, will be produced natively  
18 where possible. Plaintiffs agree to produce either in native document format with  
19 Bates numbered versions as PDFs (if the native documents have already  
20 produced) or TIFF images with a CSV file containing metadata and a .opt file  
21 with the image TIFFs compatible with Concordance. Excel, database, multimedia  
22 (audio video) files, if responsive, will be produced natively where possible. If  
23 particular documents warrant a different format, the Parties will cooperate to

1 arrange for the mutually acceptable production of such documents. If a Producing  
2 Party wishes to designate a Native File “Confidential,” it shall do so by  
3 producing the Native File on media that is labeled “Confidential” or by branding  
4 a placeholder TIFF image “Confidential.” The Parties agree not to degrade the  
5 searchability of documents as part of the document production process.

6       B. Bates Numbering: Each page of a produced document will have a  
7 Bates number electronically “burned” onto the image, if possible, or by file,  
8 which includes an alpha prefix along with a fixed number, i.e., WOTC\_0000001.  
9 This format must remain consistent across all production numbers and be placed  
10 on the lower right corner of all images so as not to unreasonably obliterate or  
11 obscure any information. No other legend or stamp will be placed on a document  
12 image other than confidentiality legends (where applicable) or redactions.

13       C. Social Media: ESI from social media websites (e.g., LinkedIn,  
14 Facebook, Twitter) may be produced by capturing information through “screen  
15 shots” or “screen captures” and converting same into images along with  
16 corresponding extracted text or OCR unless the Parties agree to perform bulk  
17 exports of accounts, such as by exporting out a profile from LinkedIn or  
18 downloading a copy of an individual’s Facebook data or archive.

19       E. Production Media: Documents shall be exchanged on DVD-ROMs,  
20 CD-ROMs, USB drives, portable hard drives, or through secure file transfer  
21 protocols (e.g., FTP) or similar secure electronic transmission. The production  
22 media shall be labeled with the Volume Number and Production Date along with  
23 the Bates Number range(s) of the materials, and where not practicable to do so,

1 may be provided in an accompanying letter. Any document production that  
2 contains “non-public personal information” (as defined in the Gramm-Leach-  
3 Bliley Act) shall be produced in encrypted form. If a Producing Party encrypts or  
4 “locks” the production, the Producing Party shall send, under separate cover, an  
5 explanation of how to decrypt the files.

6       F. Technical Problems. The Parties agree to promptly alert all other  
7 Parties concerning any technical problems associated with complying with this  
8 Stipulation. To the extent compliance with this Stipulation imposes an undue  
9 burden with respect to any protocol, source, or search term listed herein, the  
10 Parties shall promptly confer in an effort to resolve the issue.

11      **9. DEDUPLICATION**

12       A. Global or Horizontal Deduplication: A Party is only required to  
13 produce a single copy of a responsive document and a Party may de-duplicate  
14 responsive ESI (based on MD5 or SHA-1 hash values at the document level)  
15 across custodians. For e-mails with attachments, the hash value shall be  
16 generated based on the parent-child/family document grouping.

17       B. Threading: Each Party may also deduplicate e-mails in such a way  
18 as to eliminate earlier or incomplete chains of e-mails, and produce only the most  
19 complete iteration of an e-mail chain. Any deduplication tool used by a Party  
20 must ensure that an e-mail will be suppressed only if its recipients (including cc  
21 and bcc recipients), subject, body text (excluding specified automatic footers and  
22 normalized to consolidate white space) and attachments are wholly included in  
23

1 another more complete e-mail. The Parties agree to meet and confer regarding  
2 the use of other deduplication methods.

3 **10. PHASING**

4 Given the anticipated volume of potentially discoverable ESI, the Parties  
5 agree to cooperate regarding production, such as prioritizing custodians, key  
6 word searches, predictive coding, or specific requests for production as set out on  
7 the attached Exhibit B. The Parties agree that such cooperation does not waive  
8 any party's right to request additional discovery, challenge a Party's production,  
9 waive any objections to additional discovery, or excuse any party from meeting  
10 discovery obligations, including supplementation obligations. As discovery  
11 continues, Parties will meet and confer about subsequent productions, including  
12 whether additional production is reasonable, whether the requests are reasonable,  
13 proportional, or unduly burdensome.

14 **11. PRIVILEGE LOGS DOCUMENTS PROTECTED FROM  
15 DISCOVERY**

16 A. The Parties agree that they need not exchange the text of litigation  
17 hold/retention instructions/preservation letters issued in this litigation as such  
18 instructions are presumed to be subject to withholding on the basis of the  
19 attorney-client privilege and work product doctrine, but the Parties reserve the  
20 right to request production of such documents.

21 B. Pursuant to Fed. R. Evid. 502(d), the production of a privileged or  
22 work-product-protected document, whether inadvertent or otherwise, is not a  
23 waiver of privilege or protection from discovery in this case or in any other

1 federal or state proceeding. For example, the mere production of privileged or  
2 work-product-protected documents in this case as part of a mass production is not  
3 itself a waiver in this case or in any other federal or state proceeding.

4 C. A Party need only include one entry on the privilege log to identify  
5 withheld e-mails that constitute an uninterrupted dialogue between or among the  
6 same individuals (often referred to as an “e-mail thread”); however, to the extent  
7 the e-mail thread, or any portion, shows distribution to additional individuals then  
8 those additional individuals/recipients shall be identified on the privilege log. E-  
9 mail threads may only be withheld in their entirety if all responsive portions are  
10 privileged; otherwise, threads should be produced with privileged portions  
11 redacted. Duplicative emails suppressed using email thread suppression need not  
12 be reflected on a Party’s privilege log.

13 D. Communications involving trial counsel that post-date the filing of the  
14 complaint need not be placed on a privilege log.

15 **12. Costs and Burden**

16 Defendant acknowledges that burdens placed on any party during this  
17 litigation, including during discovery, must be proportional to the litigation itself,  
18 including the nature of the claims and the amount in controversy. *See Fed. R.*  
19 *Civ. P. 1, Fed. R. Civ. P. 26 (b)(2)(C).* Plaintiffs decline to make this  
20 acknowledgement. Any party reserves the right to seek shifting or sharing of  
21 certain discovery costs, including ediscovery vendor and attorney fees, in  
22 appropriate circumstances as allowed by law. *See Fed. R. Civ. P. 26 (b)(2)(B),*  
23 *(C).* For example, Defendant reserves its right to seek payment from Plaintiffs for

1 all reasonable costs and fees it incurs related to its attorney review and  
2 production should ESI production exceed more than 30,000 documents.

3 **13. PROTECTIVE ORDERS**

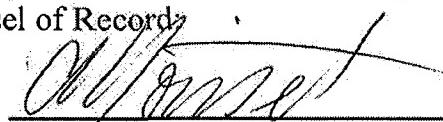
4 Nothing in this Stipulation shall be deemed to limit, modify, or override  
5 any provision of any Protective Order signed by the Parties and entered by the  
6 Court in this matter. In the event of any conflict between this Stipulation and the  
7 Protective Order, the provisions of the latter shall govern.

8 **14. MODIFICATION**

9 This Stipulated Order may be modified by a Stipulated Order of the Parties  
10 or by the Court for good cause shown.

11 **IT IS SO STIPULATED**, through Counsel of Record

12 DATED: December 1, 2017



CATHARINE MORISSET  
FISHER & PHILLIPS, LLP  
Attorney for Defendant

15  
16 DATED: December 4, 2017



MATTHEW RIGHETTI  
RIGHETTI GLUGOSKI, P.C.  
Attorney for Plaintiffs

17  
18 **IT IS ORDERED** that the foregoing Stipulation is approved.

19  
20 Dated:



UNITED STATES DISTRICT/MAGISTRATE  
JUDGE

21  
22  
23 Howard R. Lloyd

**EXHIBIT A**  
**LIST OF CUSTODIANS**

No.	Identified By Party	Custodian Name	Job Title/Contract Title	Wizards Separation Date/Contract End Date	Preserved/Objection <sup>2</sup>
1.	Plaintiffs	Marchella Allen	Event Operations Specialist	Current	Preserved
2.	Plaintiffs	Garth Avery	Content Specialist	Current	Preserved
3.	Plaintiffs	Paul Bazakas	Sr Director Sales Operations	Current	Preserved
4.	Plaintiffs	James Bennett	Independent Contractor for Judge Services	Currently, not under contract	Never Wizards employee; no Wizards email address
5.	Plaintiffs/Defendant	Helene Bergeot	Director Global Org Play	5/16/17	Preserved
6.	Plaintiffs	Nelson Brown	Customer Service Rep	Current	Preserved
7.	Plaintiffs	Sandra Castaneda	Org Play Coordinator	Current	Preserved
8.	Plaintiffs	John Carter [sic] John Carter, Jr.	Manager Marketing OP Administration  Independent Contractor for Judge Services  PT Philadelphia	8/23/2004 – 7/11/2005  11/03/2008 - 10/14/2009  9/4/2011	N/A <sup>3</sup>
9.	Plaintiffs	Kyle Cassinerio	Customer Service Rep	Current	Preserved
10.	Plaintiffs/Defendant	Elaine Chase	VP Global Brand Strategy and Marketing	Current	Preserved
11.	Plaintiffs	Greg Collins	Manager Org Play Production	Current	Preserved
12.	Plaintiffs	Christian Cocks	Wizards of the Coast President	Current	Preserved
13.	Defendant	RE Dalrymple	Director, Magic: the Gathering Organized Play	May 2016	Preserved
14.	Plaintiffs	Adrian Davis [sic] Adrian Davilla	Customer Service Rep	03/17/2014	Preserved

<sup>2</sup> Defendant issued litigation hold notices to key players in October 2015 and has added preserved emails for non-key players based on Plaintiffs' list of custodians. Defendant does not agree that custodians listed only by Plaintiffs are key players, and do not waive their objections to review or production of emails belonging to such custodians.

<sup>3</sup> N/A = email account was deleted prior to notice of lawsuit per Defendant's email retention policy.

15.	Plaintiffs/ Defendant	Ron Foster	Tournament Operations Manager	Current	Preserved
16.	Plaintiffs	Alexander Green	Customer Service Rep	Current	Preserved
17.	Plaintiffs	Paul Hagan	Director Retail Development	Current	Preserved
18.	Plaintiffs/ Defendant	Aaron Hamer	Interim Judge Community Manager (9/2015-1/2016) Business Operations Manager, Premier Play (1/2016-7/2016)	7/2016	Preserved
19.	Plaintiffs	Matthew Hamilton	Sr Customer Service Rep	Current	Preserved
20.	Plaintiffs	Andrew Heckt	Judge Community Manager (former)	9/3/2015	N/A
21.	Plaintiffs	Ethan Jones	Org Play Coordinator	Current	Preserved
22.	Plaintiffs	Philip Justus	Customer Service Rep	Current	Preserved
23.	Plaintiffs/ Defendant	Laura Kilgore	Tournament Operations Manager	Current	Preserved
24.	Plaintiffs	Scott Knoblich	SVP Global Sales & Trade Marketing	Current	Preserved
25.	Plaintiffs/ Defendant	Scott Larabee	Manager Org Play Programs	Current	Preserved
26.	Plaintiffs	Bernard Menth	Org Play Coordinator	5/19/17	Preserved
27.	Plaintiffs	Tara Montoya	Manager Customer Service Retail Support	Current	Preserved
28.	Plaintiffs/ Defendant	Sarah Mox (Smith)	Associate Community Manager Judge Network	Current	Preserved
29.	Plaintiffs	Jacob Bourigat [sic] Nourigat	Supervisor Retail Customer Service	Current	Preserved
30.	Plaintiffs	Kyle O'Neill	Sr Retail Support Rep	Current	Preserved
31.	Plaintiffs	Leah Potyondy	Direct Sales Coordinator	Current	Preserved
32.	Plaintiffs	Bryan Prilman [sic] Prillaman	Exemplar Program Facilitator (IC)	Independent Contractor	Never a Wizards employee/ Never provided Wizards email address
33.	Plaintiffs	Aaron Reed	Manager Premier Play Operations	Current	Preserved
34.	Plaintiffs	Mike Rosenberg	Content Specialist	Current	Preserved
35.	Plaintiffs	Nataly Scheidt	Customer Service Rep	Current	Preserved
36.	Plaintiffs	Eric Sorenson [sic] Sorensen	Coordinator for OP Administration	5/9/2007 – 7/5/2014	N/A

37.	Plaintiffs	Dan Tebow	Supervisor Retail Customer Service	Current	Preserved
38.	Plaintiffs	Joseph Torra	Customer Service Rep	Current	Preserved
39.	Plaintiffs	Joe Yochum	Sr Mgr Org Play Operations	Current	Preserved
40.	Plaintiffs	Gail Gordon	Director Accounting	Current	Preserved, 10/17
41.	Plaintiffs	Bryce Haley	Manager	Current	Preserved, 10/17
42.	Plaintiffs	Patrick Wong	Assoc Specialist Fraud	Current	Preserved, 10/17
43.	Plaintiffs	McLaine Crowell	Specialist Fraud	Current	Preserved, 10/17
44.	Plaintiffs	Joshua Stoneburg	Specialist Fraud	Current	Preserved, 10/17
45. and up	Defendant	All named Plaintiffs and all opt-in Plaintiffs	(Judges)	--	Plaintiffs to Provide Information

**EXHIBIT B**  
**SEARCH TERMS AND CUSTODIANS**

Search #	Search Terms (detailed)	Phase I Hits Hamer, Larabee, Mox/Smith <sup>4</sup>	Phase I Review	Phase II Hits Bergeot, Foster, Kilgore, Chase <sup>5</sup>	Phase II Review	Phase III Sampling: Custodians TBD
1	"Judge Program"	8,345	Sampling <sup>6</sup>	3,592	Sampling <sup>7</sup>	Parties will confer
2	"Head Judge"	10,912	Sampling	6,471	Sampling	Parties will confer
3	"Judge Level**"	3,211	Sampling	1,355	Sampling	Parties will confer
4	"Level (1 2 3 4 5)"	51,271	Sampling	37	Sampling	Parties will confer
5	"Exemplar Program"	1,045	All	258	All	Parties will confer
6	"Judge*" near/20 "Foil"	94,638	Sampling	1,143	Sampling	Parties will confer
7	"Judge Manager**"	2,556	Sampling	929	Sampling	Parties will confer
8	"Community Manager**"	12,429	Sampling	2,024	Sampling	Parties will confer
9	"Judge Center"	5,848	Sampling	1,800	Sampling	Parties will confer
10	"Judge Apps"	1,671	Sampling	371	Sampling	Parties will confer
11	"magicjudges.org"	15,602	Sampling	1,818	Sampling	Parties will confer
12	"Judge*" near/20 "volunteer**"	1,089	All	658	All	Parties will confer
13	"Judge*" near/20 "employ**"	1,974	Sampling	1,178	Sampling	Parties will confer
14-16	"Judge*" near/20 "pay" or "paid" or "compensat**"	7,555	Sampling	1890	Sampling	Parties will confer
17	"Judge*" near/20 "wage**"	2,172	Sampling	39	Sampling	Parties will confer
18	"Judge*" near/20 "product support"	7,595	Sampling	115	Sampling	Parties will confer

<sup>4</sup> The total number of files currently loaded in Catalyst for custodians Hamer, Larabee, and Mox/Smith is 57,043.

<sup>5</sup> The total number files currently loaded in Catalyst for custodians Bergeot, Foster, Kilgore, and Chase is 175,653.

<sup>6</sup> The random sample size will be generated by using Catalyst's mathematical random sampling parameters to achieve a confidence level of 95% with a 5% margin of error, and an expected proportion of 50% responsive.

<sup>7</sup> For emails loaded as of 8/1/17.

19	"Judge*" near/20 "prize support"	4,799	Sampling	30	Sampling	Parties will confer
20	"Judge*" near/20 "1099"	265	Sampling	4	Sampling	Parties will confer
21-23	"Judge*" near/20 "W-9" or "W-4" or "W-2"	4,382	Sampling	6084	Sampling	Parties will confer
24	"Judge*" near/20 "work*"	19,153	Sampling	273	Sampling	Parties will confer
25	"Judge*" near/20 "dut*"	687	All	1,012	All	Parties will confer
26	"Judge*" near/20 "hour*"	1,512	Sampling	2,825	Sampling	Parties will confer
27	"Judge*" near/20 "schedul*"	3,358	Sampling	3,162	Sampling	Parties will confer
28	"Judge*" near/20 "contract*"	4,981	Sampling	27	Sampling	Parties will confer
29	"Judge*" near/20 "booster box"	12,940	Sampling	2,270	Sampling	Parties will confer
30	"Judge*" near/20 "conference*"	5,555	Sampling	745	Sampling	Parties will confer
31	"Judge*" near/20 "free*"	964	All	1,543	All	Parties will confer
32	"Judge*" near/20 "promot*"	4,645	Sampling	1,336	Sampling	Parties will confer
33	"Judge*" near/20 "advanc*"	2,320	Sampling	3,045	Sampling	Parties will confer
34	"Judge*" near/20 "certif*"	6,015	Sampling	593	Sampling	Parties will confer
35	"Judge*" near/20 "exam"	3,112	Sampling	1,537	Sampling	Parties will confer
36	"Judge*" near/20 "test*"	11,093	Sampling	294	Sampling	Parties will confer
37	"Judge*" near/20 "stud*"	427	All	411	All	Parties will confer
38	"Judge*" near/20 "disqualif*"	925	All	254	All	Parties will confer
39	"Judge*" near/20 "disciplin*"	216	All	314	All	Parties will confer
40	"Judge*" near/20 "violat*"	729	All	3,815	All	Parties will confer
41	"Judge*" near/20 "requir*"	5,653	Sampling	883	Sampling	Parties will confer
42	"Judge*" near/20 "conduct*"	3,525	Sampling	926	Sampling	Parties will confer
43	"Judge*" near/20 "ban*"	1,512	Sampling	1,067	Sampling	Parties will confer
44	"Judge*" near/20 "suspen*"	2,908	Sampling	95	Sampling	Parties will confer
45	"Judge*" near/20 "uniform"	310	All	1,349	All	Parties will confer

46	"Judge*" near/20 "shirt"	5,174	Sampling	4,560	Sampling	Parties will confer
47	"Judge*" near/20 "communit*"	16,389	Sampling	2,326	Sampling	Parties will confer
48	"Judge*" near/20 "rule*"	4,199	Sampling	1,453	Sampling	Parties will confer
49	"Judge*" near/20 "polic*"	2,669	Sampling	605	Sampling	Parties will confer
50	"Judge*" near/20 "procedur*"	1,176	Sampling	1,903	Sampling	Parties will confer
51 and 52	"Judge*" near/20 "WPN" or "Wizards Play Network"	9,298	Sampling	819	Sampling	Parties will confer
53	"Code of Conduct"	2,207	Sampling	293	Sampling	Parties will confer
54 and 55	"Judge Conduct Committee" or "JCC"	4,409	Sampling	498	Sampling	Parties will confer
56, 57, and 58	"Magic Judge Code" or "Judge Code" or "Magic Code"	683	Sampling	311	Sampling	Parties will confer
59 and 60	"Regional Coordinator Advisory Committee" or "RCAC"	2,798	Sampling	2207	Sampling	Parties will confer
61	"Judge*" near/20 "organized play"	1,613	Sampling	375	Sampling	Parties will confer
62	"Judge*" near/20 "OPIS"	2,001	Sampling	113	Sampling	Parties will confer
63 and 64	"Judge*" near/20 "Wizards Event Reporter" or "WER"	11,249	Sampling	786	Sampling	Parties will confer
65	"Judge*" near/20 "competitive play"	120	All	1,340	All	Parties will confer
66 and 67	"Judge*" near/20 "Regional Coordinator" or "RC"	24,999	Sampling	4044	Sampling	Parties will confer
68-69	"Judge*" near/20 "tournament organize*" or "TO"	111,387	Sampling	31,860	Sampling	Parties will confer
70	"tournament organize*" or "TO" near/20 "contract*" or "agree*" or "require**"	970	All	887	All	Parties will confer
73	"Judge*" near/20 "Preliminary Pro-Tour Qualifier"	2,700	Sampling	1,901	Sampling	Parties will confer
74, 75, and 76	"Judge*" near/20 "PPTQ*" or "Pro	4,589	Sampling	1973	Sampling	Parties will confer

	Tour Qualifier" or "PTQ**"					
77	"Judge**" near/20 "Regional Pro-Tour Qualifier" or "RPTQ**"	1,256	Sampling	1744	Sampling	Parties will confer
79, 80	"Judge**" near/20 "Magic World Cup" or "MWC**"	17	All	9	All	Parties will confer
81, 82	"Judge**" near/20 "Magic World Cup Qualifier" or "MWCQ**"	5	All	531	All	Parties will confer
83, 84	"Judge**" near/20 "World Magic Cup" or "WMC**"	2,750	Sampling	1729	Sampling	Parties will confer
85, 86	"Judge**" near/20 "World Magic Cup Qualifier" or "WMCQ**"	1,459	Sampling	1797	Sampling	Parties will confer
87	"Judge**" near/20 "Grand Prix Trial" or "GPT**"	1,463	Sampling	3172	Sampling	Parties will confer
89	"Judge**" near/20 "Pro-Tour"	75,430	Sampling	89	Sampling	Parties will confer
90	"Judge**" near/20 "Friday Night Magic" or "FNM**"	1,004	Sampling	536	Sampling	Parties will confer
92	"Judge**" near/20 "Pre-Release"	38,996	Sampling	132	Sampling	Parties will confer
93	"Judge**" near/20 "Game Day"	207	All	4,048	All	Parties will confer
94, 95	"Judge**" near/20 "Grand Prix" or "GP"	50,163	Sampling	9,874	Sampling	Parties will confer
96, 97	"Judge**" near/20 "Star City" or "SCG"	783	Sampling	445	Sampling	Parties will confer
98	"Judge**" near/20 "Channel Fireball"	228	Sampling	377	Sampling	Parties will confer
99	"Judge**" near/20 "Pastimes"	340	Sampling	245	Sampling	Parties will confer
100	"Judge**" near/20 "Cascade"	447	Sampling	7	Sampling	Parties will confer
101	"Judge**" near/20 "Professional Event Services" or "Premier Event Services"	12	All	44	All	Parties will confer
103,104, and 105	"Star City" near/20 "contract**" or "agree**" or "require**"	147	All	100	All	Parties will confer

106, 107 and 108	"Channel Fireball" near/20 "contract**" or "agree**" or "require**"	160	All	258	All	Parties will confer
109, 110, and 112	"Pastimes" near/20 "contract**" or "agree**" or "require**"	710	Sampling	220	Sampling	Parties will confer
112	"Cascade" near/20 "contract**" or "agree" or "require"	907	Sampling	288	Sampling	Parties will confer
115	"Professional Event Services" near/20 "contract**" or "agree**" or "require**"	665	Sampling	33	Sampling	Parties will confer
118	"Premier Event Services" near/20 "contract**"	(See above)	Sampling	0	Sampling	Parties will confer
119	"Premier Event Services" near/20 "agree**"	(See above)	Sampling	0	Sampling	Parties will confer
120	"Premier Event Services" near/20 "require**"	(See above)	Sampling	3	Sampling	Parties will confer
121	"Professional Event" near/20 "require**"	(See above)	Sampling	33	All	Parties will confer
122	"Professional Event" near/20 "agree**"	(See above)	Sampling	10	All	Parties will confer
123	"Star City" near/20 "foil**"	105	All	37	All	Parties will confer
124	"Star City" near/20 "box**"	(See above)	All	29	All	Parties will confer
125	"Star City" near/20 "booster**"	(See above)	All	51	All	Parties will confer
126	"Star City" near/20 "prize**"	(See above)	All	12	All	Parties will confer
127	"Channel Fireball" near/20 "foil**"	94	All	51	All	Parties will confer
128	"Channel Fireball" near/20 "box**"	(See above)	All	19	All	Parties will confer
129	"Channel Fireball" near/20 "booster**"	(See above)	All	35	All	Parties will confer
130	"Channel Fireball" near/20 "prize**"	(See above)	All	37	All	Parties will confer
131	"Pastimes" near/20 "foil**"	437	All	160	All	Parties will confer
132	"Pastimes" near/20 "box**"	(See above)	All	118	All	Parties will confer
133	"Pastimes" near/20 "booster**"	(See above)	All	317	All	Parties will confer

134	"Pastimes" near/20 "prize**"	(See above)	All	23	All	Parties will confer
135	"Cascade" near/20 "foil**"	428	All	20	All	Parties will confer
136	"Cascade" near/20 "box**"	(See above)	All	22	All	Parties will confer
137	"Cascade" near/20 "booster**"	(See above)	All	101	All	Parties will confer
138	"Cascade" near/20 "prize**"	(See above)	All	0	All	Parties will confer
139 - 146	"Professional Event Services" near/20 "foil**" or "booster**" or "box**" "prize**"	10	All	74	All	Parties will confer
147, 148, and 149	"Judge**" near/20 "Andy Heckt" or "Andrew Heckt" or Heckt	7,687	Sampling	34	All	Parties will confer
150-155	"tournament organize**" or "TO" NEAR/20 "Andy Heckt" or "Andrew Heckt" or "Heckt"	5	All	289	All	Parties will confer
156, 157	"Judge**" NEAR/20 "John Carter" or "Carter"	710	Sampling	274	Sampling	Parties will confer
158-161	"tournament organize**" or "TO" NEAR/20 "John Carter" or "Carter"	251	Sampling	1180	Sampling	Parties will confer
162-163	"Judge**" NEAR/20 "Helene Bergeot" or "Bergeot"	8,057	Sampling	7,617	Sampling	Parties will confer
164, 165	"Judge**" NEAR/20 "Aaron Hamer" or "Hamer"	842	All	501	All	Parties will confer
166 – 168	"Judge**" NEAR/20 "Sara Smith" or "Sara Mox" or Mox	13,609	Sampling	1822	Sampling	Parties will confer
169-170	"Judge**" NEAR/20 "Scott Larabee" or Larabee	4,638	Sampling	3255	Sampling	Parties will confer
171-172	"Judge**" NEAR/20 "Laura Kilgore" or "Kilgore"	1,821	Sampling	9214	Sampling	Parties will confer
173	"Judge**" NEAR/20 "Ron Foster"	6,421	Sampling	304	Sampling	Parties will confer
174	"Judge**" NEAR/20 "Justin Turner"	1,322	Sampling	37	Sampling	Parties will confer
175	"Judge**" NEAR/20	24,241	Sampling	6	Sampling	Parties will

	"Adam Shaw"					confer
176	"Judge*" NEAR/20 "Joshua Stansfield"	143	All	74	All	Parties will confer
177	"Judge*" NEAR/20 "Peter Golightly"	138	All	76	All	Parties will confer
178	"Judge*" NEAR/20 "lawsuit"	300	All	733	All	Parties will confer
179	"Judge*" NEAR/20 "complain*"	1,055	All	1,341	All	Parties will confer
180	"Judge*" NEAR/20 "charg*"	1,224	Sampling	6	Sampling	Parties will confer
181-182	"Judge*" NEAR/20 "FLSA" or "Fair Labor Standards Act"	72	All	13	All	Parties will confer
183-184	"Judge*" NEAR/20 "DOL"	839	All	13	All	Parties will confer
185-187	"Judge*" NEAR/20 "DLSE" or "Department of Labor Standards Enforcement" or "Labor Commissioner"	341	All	29	All	Parties will confer
188 -189	"Judge*" NEAR/20 "IRS" "Internal Revenue Service"	11,309	Sampling	311	Sampling	Parties will confer
190 -191	"Shaw" NEAR/20 "Wizards of the Coast" or "WoTC"	13,130	Sampling	1274	Sampling	Parties will confer
192	"Judge*" near/20 "independent contractor*"	2,124	Sampling	1,476	Sampling	Parties will confer